

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

F.H. Everett and  
Associates, Inc.

Plaintiff

v.

Andrea Markwalter,

Defendant

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C.A. No. 06-03-0115

**Submitted: August 22, 2006**

**Decided: August 28, 2006**

**Upon Defendant's Motion for Reargument.**

**Motion is denied**

**Williams W. Pepper, Sr. Esquire, Schmittinger & Rodriguez, 414 South State Street, Post Office Box 497, Dover, Delaware 19903-0497, Attorney for Plaintiff.**

**Richard S. Phillips, Esquire, The Phillips Law Firm, 22 W. Dover Street, Easton, Maryland 21601-4455, Attorney for Defendant.**

**Trader, J.**

In this civil action, Richard S. Phillips, Esquire, filed a motion for reconsideration of the Court's decision denying him permission to practice law in the Court of Common Pleas. A motion for reconsideration is tantamount to a motion for reargument and under the rules of court, the motion is time barred. The motion is also denied on the merits because Mr. Phillips does not maintain a bona fide office in this State for the practice of law in which the attorney practices by being there a substantial and scheduled portion of time during ordinary business hours in the traditional work week. Hence, the motion for reargument is denied.

The relevant facts are as follows: On June 8, 2006, Richard S. Phillips, Esquire filed a motion to vacate a default judgment in the case of *F.H. Everett and Associates v. Andrea Markwalter*. The address listed on his motion is 22 West Dover Street, Easton, Maryland 21601-8903. Thereafter, in response to this motion, the attorney for the plaintiff raised the question of whether Mr. Phillips maintains an office in Delaware for the practice of law. On August 2, 2006, I wrote to Mr. Phillips requesting his response on the issue of whether he can practice law before this Court. Mr. Phillips responded by asserting that an arrangement for office sharing between himself and Paul G. Enterline, Esquire, meets the requirements of Supreme Court Rule 12. All of Mr. Phillips's correspondence indicates a law office in Maryland, but there is no indication on his letterhead of a Delaware law office. At a hearing held on August 9, 2006, I ruled that Mr. Phillips could not practice law in this Court because he did not maintain an office in this State in which he spends substantial and scheduled time during ordinary business hours. On August 22, 2006, Mr. Phillips filed this motion for reconsideration.

Under Rule 59(e), a motion for reargument must be served and filed five days after the Court's decision. Under Rule 6(a), intermediate Saturdays and Sundays are excluded from the computation. Since the Court rendered its decision on August 9, 2006, the last day for filing the motion was August 16, 2006. Therefore, the motion for reargument is time barred.

In his motion for reargument, Mr. Phillips contends that he meets the requirements of Supreme Court Rule 12. I disagree.

Supreme Court Rule 12(d) provides as follows:

(d) Office for the practice of law. As used in these rules, an "office for the practice of law" means a bona fide office maintained in this State for the practice of law in which the attorney practices by being there a substantial and scheduled portion of time during ordinary business hours in the traditional work week. An attorney is deemed to be in an office even if temporarily absent from it if the duties of the law practice are actively conducted by the attorney from that office. An office must be a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person or by telephone during normal business hours and which has the customary facilities for engaging in the practice of law. A bona fide office is more than a mail drop, a summer home which is unattended during a substantial portion of the year or an answering, telephone forwarding, secretarial or similar service.

Common Pleas Civil Rule 90(a) provides as follows: "Except as provided in Rule 90.1 only members of the Bar of the Supreme Court of this State currently entitled to practice law in that Court who maintain an office in Delaware for the practice of law shall be entitled to practice as an attorney in this Court."

In the case *In re Doughty*, 832 A.2d 724, 733 (Del. 2003) the Delaware Supreme Court held that the purpose of Rule 12's bona fide office requirement is "to ensure that Delaware lawyers appearing in this Court are accessible both to the Court and to the other lawyers and parties involved in cases before this Court." In that case, the reciprocal

arrangement between Mr. Doughty and a Delaware attorney was held not in compliance with the Rule. *Id.*

Although Phillips's arrangement with Enterline arguably complies with the language in Rule 12 stating "that an office must be a place where an attorney or responsible person acting on the attorney's behalf can be reached in person or by telephone during normal business hours and which has customary facilities," he fails to address the central issue that requires that the attorney is to be at the office a substantial and scheduled portion of the time.

In the case before me, Mr. Phillips admitted to the Court that he primarily practices in Maryland. His practice in Delaware does not make up a substantial part of his practice. He stated in oral argument that he is only in the Georgetown office two or three times a year.(Tr. 3). The attorney he claims to be affiliated with is not even mentioned on his letterhead. He argues that Mr. Enterline or one of his clerks could attend to his cases in this State in the Georgetown office, but there are no facts presented to this Court which indicate the amount of time Mr. Enterline or his clerk spend on cases in which Mr. Phillips represents clients. In *Doughty, supra*, the Firm's Delaware cases accounted for 20% of the Firm's practice, but Mr. Phillips currently has only three cases in Delaware. Mr. Phillips' address and telephone number of his Delaware office are not listed in the Delaware Legal Directory. The Directory only lists his Maryland office. Mr. Phillips's letterhead and his filings indicate that he maintains an office in the state of Maryland.

In *In re Arthur*, 415 N.W. 2d 168, 170 (Iowa 1987) the court observed that "[a]n applicant who does not intend to be present in the Iowa office a substantial and scheduled

period of time, servicing Iowa clients, lacks sufficient incentive to master those matters unique to Iowa law. Occasional forays into the state to service out-of-state clients do not provide this assurance.”

Mr. Phillips has not met his burden of establishing that he is in compliance with Supreme Court Rule 12 and Common Pleas Rule 90(a). Therefore, the motion for reargument is denied.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**